IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

CTO, Anti Evasion—I, Ajmer Vs. M/s. Pahadia Textiles Corporation, Beawar

S.B. SALES TAX REVISION. PETITION NO.296/1999

Date of Order : April 13, 2007.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Vinay Goyal for the revenue.
Mr. Vivek Singhal for the assessee.

BY THE COURT:

1. Heard learned counsel.

2. This revivision petition is directed against the order of the Tax Board dated 6.7.1995 whereby the Tax Board upheld the order of learned Deputy Commissioner (Appeals) and held that no penalty U/s.16(1)(e) of the RST Act, 1954 (hereinafter referred as 'the Act') was imposable upon the respondent assessee.

3. The additional tax which was imposed by the learned Assessing Authority was on the ground that the subsequent sale or during transit sales claimed by the assessee as exempt from payment of tax under CST Act by virtue of provisions of Section 6(2) of the CST Act, 1966 did not attract any sale tax under RST Act and, therefore, even after survey if the revenue did not accept the

explanation of the assessee that such sales were exempt U/s.6(2) of the CST Act but were held taxable as sales within the State under RST Act, it was not a case fit for imposition of penalty U/s.16(1)(e) of the RST Act, 1954.

4. Mr. Vinay Goayal, learned counsel appearing for the Revenue relying on the judgment of M.P. High Court in **Jawaharlal Ramcharan Vs. Sales Tax Officer, Circle Bhopal & anr**. [(1978) 41 STC 459] submitted that the burden of proof got shifted on the respondent assessee once he admitted before the Assessing Authority that it was a bona fide mistake of Munim and, therefore, after shifting of such burden if the assessee has failed to discharge such burden, the Assessing Authority was justified in imposing the penalty U/s.16(1)(e) of the Act. He further submitted that in the ultimate analysis also since the assessee did not challenge the imposition of tax under RST Act, 1954 treating these transactions as sales within the State and paid the additional tax with interest after revising his returns, the assessee could not be absolved of the penalty U/s.16(1)(e) of the Act.

5. Countering these submissions, Mr. Vivek Singhal, learned counsel for the respondent assessee submitted that the burden of proof always was upon the revenue to establish the mens rea on the part of the assessee in deliberately and wrongly showing these sales which were exempt U/s.6(2) of the CST Act. Relying on the judgments of this Court in **CTO, Special Circle, Pali Vs. Sojat Lime Co.** [(1989)74 STC 288], **CTO Vs. Rajdhani Wines** [(1992)87 STC 362]; and **Varalakshmi Enterprises & anr. Vs. State of Karnataka & anr.** [(1998)111 STC 800 Kar], he submitted that since all the transactions were duly recorded in the books of accounts maintained in the regular course of business and the assessee bonafindely not only believed

but claimed these sales as subsequent sales or during transit sales by endorsement on bilties exempt from CST U/s.6(2) of CST Act, though lateron when after survey the revenue did not accept this contention of the assessee, the assessee filed revised returns and accepted that these were sales within the State and accordingly paid the tax under RST Act with interest. He however submitted that since there was no concealment of turn over or particulars of sales from the books of accounts, it was not a fit case for imposition of penalty U/s.16(1)(e) of the Act. He further urged that imposition of penalty is a matter of discretion and since two Appellate Authorities have concurrently held in these facts that it was not a fit case for imposition of penalty, he submitted that it was not a fit case to invoke revisional jurisdiction of this Court and reimpose the penalty U/s.16(1)(e) of the Act as no question of law as a matter of fact arises, once the discretion not to impose penalty has been exercised by the appellate authorities in favour of the respondent assessee.

6. Having heard the learned counsel and upon perusal of record and case laws cited above at the bar, this Court is of the opinion that this revision petition of revenue is devoid of merit and deserves to be dismissed. Since the transactions in question were admittedly duly recorded and disclosed in the books of accounts and this finding given by the First Appellate Authority that in fact the physical delivery of goods was not taken by the respondent assessee but only the bilties relating to goods were endorsed in favour of another dealer M/s. Bharat Textile who pledged the goods under such endorsed bilties with bank in order to avail credit facilities and ultimately after around a period of two months the goods themselves were sold to that firm and since the physical delivery of goods was not taken by the respondent

assessee, the sale could be treated as subsequent sale within the meaning of Section 6(2) of the Act.

7. Be that as it may, even if there is a bona fide dispute as to the respective contentions and whether the contention of respondent assessee that it was a subsequent sale exempted U/s.6(2) of the Act is not accepted by the revenue, still whether the penalty can be imposed U/s.16(1)(e) of the Act which empowers the Assessing Authority to impose penalty upon the assessee who “has concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein.”

8. From the facts narrated above, it appears that the two appellate authorities came to the conclusion that there was a bona fide dispute and merely because the contention of assessee was not accepted by the learned Assessing Authority and also notwithstanding the fact that after the Tax Board so held that transactions of the assessee amounted to sales within the State and the assessee paid the tax under RST Act by filing revised returns showing these transactions as sales within the State, if the appellate authority chose not to impose penalty U/s.16(1)(e) of the Act, it can only be said to be fair use of discretion by the appellate authorities in this regard. The imposition of penalty does not lie in straight jacket construction of the words employed in Section 16(1)(e) of the Act and it always depends upon the facts of each case whether there was a mala fide intention or a bona fide contention on the part of the respondent assessee. Upon perusal of the orders of the Appellate Authorities, this Court is of the opinion that the setting aside of penalty in the aforesaid facts cannot be said to be wrong in any manner and, therefore, this revision petition does not call for any interference

at the instance of Revenue.

9. Accordingly, the revision petition is dismissed, with no order as to costs.

(Dr.VINEET KOTHARI),J.

VS/